

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DIANE THAYSE, and
BABY THAYSE,

Civil No. 09-479 (JRT/SRN)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

FAIRVIEW RIVERSIDE HOSPITAL WING,
FAIRVIEW RIVERSIDE PAIN CLINIC,
JOHN MULLEN, ORLANDO CHARY,
PHYSICAL THERAPIST DEPARTMENT,
RN SUSAN HEY, "ALL STAFF YET TO BE
IDENTIFIED," FAIRVIEW UPTOWN
CLINIC, PAMELA KNOLL, MELISSA
MARKS, BARB CAREY, "ALL STAFF,"
FAIRVIEW SOUTH TOWN HOSPITAL,
"ALL EMPLOYEES AND INDIVIDUALS
YET TO BE PROPERLY IDENTIFIED,"
and "ALL ENTITIES YET TO BE
IDENTIFIED AND NAMED,"

Defendants.

Plaintiff commenced this action on February 27, 2009, by filing a self-styled complaint, and an application seeking leave to proceed in forma pauperis, ("IFP"). (Docket Nos. 1 and 2.) The Court previously examined those submissions and found Plaintiff's complaint to be defective, because it failed to allege sufficient facts to state an actionable claim for relief. The Court also found Plaintiff's IFP application to be incomplete. Because of those deficiencies, the Court entered an order, dated March 3, 2009, which informed Plaintiff that her IFP application would be "denied without prejudice." (Docket No. 5.) The order gave Plaintiff an opportunity to file an amended complaint, and to either (a) file an amended IFP application, or (b) pay the \$350 filing fee for this action. Plaintiff was advised

that if she did not submit both an amended complaint, and an amended IFP application, (or the \$350 filing fee), within thirty (30) days, the Court would recommend that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b).

The deadline for complying with the Court's prior order has now passed, and Plaintiff has not satisfied the requirements of that order. Although Plaintiff filed an amended IFP application, she still has not filed an amended complaint. Furthermore, Plaintiff has offered no explanation or excuse for her failure to comply with the prior order.

The Court's prior order clearly required Plaintiff to file not only an amended IFP application, but also an amended complaint. Because Plaintiff has not filed an amended complaint, she has not complied with the order. Therefore, it is now recommended, in accordance with the Court's prior order, that Plaintiff be deemed to have abandoned this action, and that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496, 497 (8th Cir. 2008) (unpublished opinion) ("[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order"); see also Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: May 15, 2009

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States Magistrate Judge

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **June 1, 2009** a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.